

FCC Received July 25, 1996 @ 10:40 a.m.
Wanda G. Bradshaw

ORIGINAL

**FEDERAL COMMUNICATIONS
COMMISSION**

RECEIVED

AUG 1 4 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

In Re Applications of:)	MM DOCKET No.: 96-116
)	
HOMETOWN MEDIA, INC.)	File No.: BR-950601B9
FOR RENEWAL OF LICENSE FOR)	
STATION WAYB (AM))	
WAYNESBORO, VA)	

Volume: 1

Pages: 1 through 28

Place: Washington, D.C.

Date: July 16, 1996

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
(202) 628-4888

RECEIVED

AUG 1 4 1996

1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In Re Applications of:) MM DOCKET No.: 96-116
)
HOMETOWN MEDIA, INC.) File No.: BR-950601B9
FOR RENEWAL OF LICENSE FOR)
STATION WAYB (AM))
WAYNESBORO, VA)

Suite 201
FCC Building
2000 L Street, N.W.
Washington, D.C.

Tuesday,
July 16, 1996

The parties met, pursuant to the notice of the
Judge, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACHKIN
Administrative Law Judge

APPEARANCES:

On behalf of HOMETOWN MEDIA, INC.:

WILLIAM D. SILVA, ESQUIRE
Law Offices of William D. Silva
5335 Wisconsin Avenue, N.W.
Washington, D.C. 20015
(202) 362-1711

On Behalf of FCC:

ALAN E. ARONOWITZ, ESQUIRE
ROBERT ZAUNER, ESQUIRE
Federal Communications Commission
Mass Media Bureau
2025 M Street, N.W.
Suite 8210
Washington, D.C. 20554
(202) 418-1450

Heritage Reporting Corporation
(202) 628-4888

I N D E X

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOIR DIRE
NONE

E X H I B I T S

IDENTIFIED RECEIVED REJECTED
NONE

Hearing Began: 9:00 a.m.

Hearing Ended: 9:45 a.m.

Heritage Reporting Corporation
(202) 628-4888

P R O C E E D I N G S

9:00 A.M.

JUDGE CHACHKIN: May I have the appearances of the parties on behalf of Hometown Media, Inc.?

MR. SILVA: William D. Silva.

JUDGE CHACHKIN: And on behalf of the Chief, Mass Media Bureau?

MR. ARONOWITZ: Alan Aronowitz and Bob Zauner.

JUDGE CHACHKIN: This proceeding concerns the renewal of license for Station WAYB (AM) in Waynesboro, Virginia, which is held by Hometown Media, Inc. The issues in this proceeding concern the question of whether Hometown Media, Inc. has the capability and intent to expeditiously resume the broadcast operations of WAYB (AM), consistent with the Commission's rules. And also a determination of whether Hometown Media, Inc. has violated Sections 73.1740 and/or 73.1750, of the Commission's rules.

Mr. Silva, I noticed you filed a motion for summary decision, but I don't find any precedence cited in your motion in support of the relief requested. Is there any support -- has the Commission ever granted an application for renewal of license of a silent station seeking to assign the application?

MR. SILVA: I'm not aware of any, Your Honor, but I don't think it would necessarily be precluded. I know the

1 Commission, or the Bureau, has a policy of not renewing a
2 station before it goes on the air and not assigning a
3 station before it's renewed. But what we would propose to
4 do, Your Honor, is we would ask for a grant of the renewal
5 conditioned on its speedy return to the air and --

6 JUDGE CHACHKIN: By whom? Returned to the air by
7 whom?

8 MR. SILVA: It would be returned to the air by
9 Hometown Media and the --

10 JUDGE CHACHKIN: Hometown Media? I thought it was
11 -- I thought the proposed assignee was the one that was
12 going to return to the air?

13 MR. SILVA: They will assist Hometown Media, Your
14 Honor, as a -- probably using an LMA. But you have the
15 authority --

16 JUDGE CHACHKIN: But that's not the -- I'm sorry,
17 go ahead. I'm sorry, I have the authority to do what?

18 MR. SILVA: Under the designation order to
19 condition the renewal on the speedy return. And that's what
20 we would ask you to do.

21 JUDGE CHACHKIN: But the motion for summary
22 decision talks about the proposed assignee acquiring all
23 these assets which, apparently, are not held by Hometown
24 Media and putting the station on the air. In fact, you
25 submit an affidavit or a declaration from the proposed

1 assignee, Randal Fields.

2 MR. SILVA: That's right.

3 JUDGE CHACHKIN: There is nothing here from the
4 licensee saying he has the capability or intention of
5 getting these assets himself -- acquiring these assets and
6 going on the air. As far as I could tell, all he holds is a
7 bare license. He doesn't own any of the assets currently.
8 Apparently, they are either held by the city or by the
9 creditor.

10 MR. SILVA: Well, Your Honor, what I tried to show
11 there is that the renewal applicant, the licensee, the
12 proposed assignor, and the creditors and the City of
13 Waynesboro, which is the owner of the transmitter site, have
14 all agreed to cooperate to get the station back on the air
15 and operating within 90 days. And the licensee will put the
16 station back on the air.

17 I understand that the way these things are
18 ordered, the licensee puts the station on the air, gets
19 renewed and then the license is assigned. That's what we
20 are proposing to do. Now that isn't that A-typical. I
21 think that the staff does that all the time.

22 JUDGE CHACHKIN: Well, I'm not aware of it, let me
23 hear from the staff. What is the position of the staff on
24 this matter?

25 MR. ARONOWITZ: Not necessarily with the silent

1 station.

2 JUDGE CHACHKIN: Well, that's what I'm talking
3 about. I'm talking about --

4 MR. ARONOWITZ: I mean, granting a renewal.

5 JUDGE CHACHKIN: Well, yeah, but I'm talking about
6 with a silent station. Because as I understood in the
7 rules, the issues call for whether Hometown Media, Inc. has
8 the capability of going back on the air and, the first
9 place, there is not even a declaration here from the
10 licensee. The only declarations here are from the city and
11 from the proposed assignee.

12 MR. SILVA: Well, no, I'm sorry, Your Honor, --

13 JUDGE CHACHKIN: Is there a --

14 MR. SILVA: Yeah, there is a declaration from Phil
15 Showers, who is the person --

16 JUDGE CHACHKIN: Oh, yes, I'm sorry. There is,
17 yes.

18 MR. SILVA: -- and the licensee. And he is
19 essentially saying that he has been negotiating with these
20 people since last August, the negotiations took longer than
21 anticipated, that they signed the agreement and we are going
22 to go forward and put the station back on the air.

23 JUDGE CHACHKIN: It says here, I believe, it
24 doesn't say that he's going to go on the air. He says, "I
25 believe that Randy Fields and Brenda Merica have the

1 capability and intent to expeditiously resume broadcasting".
2 That's what the last paragraph nine says, it doesn't say
3 anything about him going back on the air.

4 MR. SILVA: All right, well, Your Honor, that is a
5 -- that is a matter of not very precise draftsmanship on my
6 part, but I hope that this pleading gets the intention of
7 the parties across. And that is, that Brenda Merica and
8 Randy Fields have been negotiating for a long time with
9 creditors, with the city and with Mr. Showers to try to put
10 together a package so that the station can be returned to
11 the air expeditiously. And they have done so, and they are
12 committed to do so.

13 Now, if I could be allowed to supplement this, to
14 fill in that gap that you are pointing out, in other words,
15 it will be the licensee that goes back on the air. But, it
16 wasn't the intention of the parties, the licensee, or the
17 assignee, that that would be a permanent thing. Mr. Showers
18 tried to put the station back on the air and wasn't
19 successful. And we don't want to repeat that same situation
20 here. And that's part of the reason it's taken so long for
21 these parties to put together a realistic and a viable
22 proposal.

23 But his return of the station to the air is going
24 to be temporary. It's all conditioned on the assignment of
25 the license to Randy Fields and Brenda Merica. And, Your

1 Honor, there is no reason to believe that that assignment
2 won't be granted --

3 JUDGE CHACHKIN: The assignment hasn't been filed
4 yet, has it?

5 MR. SILVA: Well, it's prepared and it's ready to
6 file. And I was going to ask you this morning if it should
7 be filed? I mean, this is a unique situation. I know that
8 the Bureau takes the position that the silent stations had
9 been given a chance and that they have a very firm, strict
10 policy. But I think this is an exception to the rule in the
11 sense that these parties have been about this for a long
12 time.

13 This isn't a last minute, thrown together effort
14 to save the license. It's been a very carefully planned
15 effort that's taken a long time. And it just -- you know, I
16 know the basis of the Commission's policy is they want to
17 clear away these applicants who are either warehousing or
18 not using the spectrum. But that isn't the case here.
19 These people are prepared to go forward, they are qualified,
20 they are existing licensees right now of an Elkton station.

21 At least Brenda Merica is a partner in that
22 licensee. They have made a commitment, they have spent
23 money in furtherance of that. They've spent a lot of time
24 and you have the authority, under the designation order to
25 grant a conditional renewal. And if they are not on the air

1 -- if the licensee is not on the air, and if the assignment
2 isn't filed or whatever other conditions you want to place
3 on the license, then under the designation order, the
4 license is automatically canceled.

5 I think that's in -- it's paragraph -- it's cited
6 in the summary decision. It's paragraph -- I'm sorry, I
7 can't find it. Yeah, it's paragraph four.

8 JUDGE CHACHKIN: All you are citing in paragraph
9 four is whether or not a motion for summary decision should
10 be granted.

11 MR. SILVA: Well, Your Honor, --

12 JUDGE CHACHKIN: You are not citing anything about
13 a silent station case, like this. There is nothing here, as
14 you pointed out, in this entire motion which deals with
15 whether a precedent for granting a silent station case under
16 the facts here.

17 MR. SILVA: Well, Your Honor, summary decision
18 is --

19 JUDGE CHACHKIN: Summary decision, the facts are
20 clear.

21 MR. SILVA: -- that the reason we --

22 JUDGE CHACHKIN: The facts are not clear here. I
23 have no evidence whatsoever that the licensee is prepared to
24 go on the air, or has the capability to go on the air, has
25 the assets to go on the air. All I get from here is, that

1 the only one, he doesn't own any assets currently, as I
2 understand it, and the assets are being purchased, if
3 anything, by the proposed assignee.

4 Now, I don't know what the proposal is, the
5 proposed assignee is going to lend the assets back to the
6 licensee, so the licensees can go on the air temporarily
7 until the assignment is filed.

8 MR. SILVA: Yes, Your Honor.

9 JUDGE CHACHKIN: Now, I don't think that this
10 constitutes a situation where a motion of summary decision
11 is justified.

12 MR. SILVA: Well, Your Honor, could I
13 supplement --

14 JUDGE CHACHKIN: The facts simply aren't clear
15 here.

16 MR. SILVA: Could I supplement the motion?

17 JUDGE CHACHKIN: Well, that's not going to change
18 anything. I mean, based on the motion itself, I'm not
19 going to tender a grant of motion for summary decision.

20 MR. SILVA: Now, I'm asking you if I could
21 supplement that and show you how the parties intend to go
22 back on the air temporarily?

23 JUDGE CHACHKIN: Well, that's not hoe point. The
24 issues call for whether the licensee is prepared to go back
25 on the air, not temporarily, whether he is capability and

1 intent to expeditiously resume the broadcasting operations.
2 And determine whether he had violated the rules. If
3 anything, it appears to be a concession by you that the
4 licensee, in fact, can't meet these issues. And if
5 anything, a motion for summary decision could be granted on
6 behalf of the Commission, I assume, insofar as the issues
7 are concerned.

8 I don't think there is a basis for grant of motion
9 for summary decision.

10 MR. SILVA: Your Honor, could I --

11 JUDGE CHACHKIN: I mean, the facts that you have
12 told me and the facts indicated in this motion --

13 MR. SILVA: Well, as far -- now, Your Honor, as
14 far as the factual issues, the violation of the rule that
15 requires the licensee to advise the Commission before it
16 goes off the air and it has to retain it's silence
17 authority, I did research that. There are no cases where a
18 license renewal has been denied for violation of that rule.

19 And we did show, Your Honor, that there were
20 extenuating circumstances here and, further, that the rule
21 was only -- they were only off the air without authority for
22 three months.

23 JUDGE CHACHKIN: But that's what --

24 MR. SILVA: But that, to me, Your Honor, summary
25 decision is where there is any -- if there is any genuine

1 issue of material fact that remains here -- I mean, I
2 realize the Bureau has an opportunity to respond to this
3 motion, and they may very well have some evidence that would
4 cast doubt on Mr. Shower's story here, but you know, there
5 just aren't any cases where a renewal has been denied for
6 staying off the air for three months without authority.

7 JUDGE CHACHKIN: But this is not a situation where
8 they've stayed off the air without authority. It's a
9 situation which appears to be where they have abandoned
10 operation all together. He doesn't seem to have a tower
11 site, he doesn't have a studio, he doesn't have any
12 equipment, so how could he have gone on the air all this
13 time? It's not -- it doesn't involve the customary
14 situation where the licensee is off the air. He didn't have
15 facilities available to go back on the air.

16 And I don't know if the Commission has ever been
17 advised that he has abandoned -- that all his facilities
18 have been disposed of.

19 MR. SILVA: Well, I don't know --

20 JUDGE CHACHKIN: They can overbuy creditors in
21 this city. I mean, this is an entirely different situation
22 than the norm.

23 MR. SILVA: Well, Your Honor, the facilities are
24 there.

25 JUDGE CHACHKIN: I thought I read here where the

1 studio was being -- where the power site still has to be
2 reacquired and where there is no studio and there is no
3 equipment. Am I wrong?

4 MR. SILVA: I don't think so.

5 JUDGE CHACHKIN: Well?

6 MR. SILVA: The studio -- or the antennae site --
7 the tower site belongs to the city. And the lease has to be
8 assigned from Hometown, the licensee to the proposed buyers.
9 And the city has agreed to assign the lease to them.

10 JUDGE CHACHKIN: I understand that, but it belongs
11 to the city, how can the licensee operate? How is he able
12 to -- you are telling me that during this period of time, we
13 are talking about a three month period. But if the
14 license -- if the tower belonged to the city, than the
15 licensee wasn't in a position to operate. We are not
16 dealing with just a simple situation.

17 MR. SILVA: Your Honor, he leased the site from
18 the city. I mean, that's a very typical situation.

19 JUDGE CHACHKIN: But apparently --

20 MR. SILVA: They don't have to own the site.

21 JUDGE CHACHKIN: I understand that. He leased the
22 site from the city, but apparently he let the lease go or he
23 didn't renew the lease or did something. He didn't own the
24 lease at the time.

25 MR. SILVA: Well, now, Your Honor, in all due

1 respect, I mean, the city said they are willing to assign
2 the lease --

3 JUDGE CHACHKIN: I understand that, but what --

4 MR. SILVA: -- to the new owners, and the new
5 owners say they are willing to assume the lease.

6 JUDGE CHACHKIN: That's not what I'm saying. I'm
7 saying during this period of time, these three months of
8 what you are talking about, who held the lease?

9 JUDGE CHACHKIN: The Hometown still is the lessee.
10 They have agreed to assign the lease to this new entity.
11 And that's why where the city says, and this is the
12 affidavit of the city manager, he said the city agrees to
13 assign the lease to them and to cooperate in every respect
14 with the new owner because they want the station to get back
15 on the air.

16 Your Honor, I understand that there is a gap here,
17 that the motion does not address how the licensee will
18 return the station to the air and in what capacity he will
19 initially operate. That was just skipped over through
20 inadvertence. The idea is that the ultimate owner, the
21 buyers here, have taken every step -- have lined everything
22 up so that hoe station can be returned to the air.

23 JUDGE CHACHKIN: But they haven't filed an
24 application for assignment yet.

25 MR. SILVA: Well, I -- you know, Your Honor, I

1 advised them not to file an application for assignment until
2 the renewal. Until there was some action on the renewal.
3 You know, they have limited resources, there is filing fees
4 involved. I don't think they should be required to engage
5 in a futile act by filing a renewal.

6 Now, if you are going to say this morning that,
7 you know, there is no way they are going to get a renewal,
8 than these parties are going to -- they are not going to
9 pursue it. They will have to wait until the station becomes
10 available, spend additional money, apply for a new license,
11 and try to put it on the air that way. It will take over a
12 year, I guarantee you that. And that's their option. They
13 can either pursue this and try to get the station back on
14 the air through a renewal, or they can wait until the
15 renewal is denied and file a new 301 and start the process
16 all over again.

17 But, I mean, there is just so much money you can
18 invest in an AM station in Waynesboro, Virginia. I mean,
19 you reach a point where you can't afford to put it back on
20 the air anymore. We were hoping that this would -- we are
21 not trying to short-circuit the process. We are trying to
22 provide you with information so that you can be assured that
23 station will be put back on the air within 90 days.

24 And we feel that that will serve the public
25 interest. Now, I mean, if it's crossing all the Ts and

1 dotting the Is, we are perfectly willing to do that. And I
2 would ask that we would be given an opportunity to
3 supplement the motion for summary decision so that we can
4 fill in that gap and provide -- the parties have discussed
5 it.

6 And Mr. Fields is here this morning. If you would
7 like, you can even ask him about it. But what they plan to
8 do is to enter into a very typical LMA. And so that it will
9 be under the licensee's authority and auspices that the
10 station is returned to the air. And then the assignment
11 application can be filed today, if you'd like.

12 I mean, it is ready to go. And we assume that if
13 the renewal is granted, the station is returned to the air,
14 there wouldn't be any bar from assigning the license to this
15 group. I mean, they are qualified, they are local, and they
16 want to get the station back on the air.

17 JUDGE CHACKIN: Well, what does the Bureau have
18 to say, anything?

19 MR. ARONOWITZ: Your Honor, we agree with the
20 observations that you have made this morning. We are going
21 to be filing an opposition and a counter-motion to the
22 motion for summary decision.

23 JUDGE CHACKIN: Well, there we are. Mr. Silva,
24 the ball is in your court. What you want to do, if you want
25 to file a transfer control application or what?

1 MR. SILVA: Well, Your Honor, should be file it,
2 Your Honor?

3 JUDGE CHACHKIN: Well, I can't advise you.
4 According to the designation order in you June 1995 renewal
5 application, you indicated you were concluded negotiations,
6 "with a Waynesboro businessman who has the financial ability
7 to put the radio station back on the air, and that a FCC
8 Form 315 application should be filed with the Commission,
9 requesting a transfer of control to this individual". Now,
10 why you didn't file it at that time, we are here now more
11 than 12 months later, maybe this would have short-circuited
12 everything if you would have filed it. And why you haven't
13 filed up to now, --

14 MR. SILVA: Well, Your Honor, --

15 JUDGE CHACHKIN: -- so the Commission can make a
16 determination of what they want to do.

17 MR. SILVA: But, Your Honor, that's explained in
18 Mr. Showers' affidavit. That group, a businessman, that
19 includes Mr. Edwards, who is the creditor of the station,
20 agreed to step aside for Randy Fields and Brenda Merica, so
21 that they could buy the station because they are experienced
22 broadcasters. I mean, it's explained in the statement. It
23 just seems unless the Bureau feels that somebody isn't being
24 honest and that these statements are incorrect, it seems to
25 me that they are reliable and that you can rely on them.

1 I mean, there isn't any suggestion that these
2 people aren't telling the truth. He just explained that he
3 was negotiating with these local businessmen, he ran into
4 financial difficulties, explained what was the cause of the
5 difficulties. There were some unanticipated costs,
6 including the proximity of the day care center to the tower.
7 I mean, and they had to move it. And this caused delay.

8 I mean, it's all spelled out in Mr. Showers'
9 affidavit. That's why he failed. These group of local
10 businessmen stepped in and they tried to rescue the station
11 and they stepped aside when Mr. Fields and Ms. Merica came
12 along because they are experienced broadcasters. I mean,
13 that's the explanation for why they didn't file the renewal
14 then -- or the assignment then. The reason they haven't
15 file it now is because I told them to wait.

16 I mean, you know, there is a filing fee involved.
17 Why should they spend a filing fee if, you know, until they
18 find out where they stand vis-a-vis this hearing?

19 JUDGE CHACHKIN: Well, I can't tell you where they
20 stand vis-a-vis this hearing until the hearing is held and
21 all the evidence is taken and then a determination is made.

22 MR. SILVA: May I ask, in all due respect, Your
23 Honor, what kind of evidence the Bureau intends to --

24 JUDGE CHACHKIN: Well, you have the burden. You
25 have the burden, you have to provide the testimony, you have

1 to show the precedent for granting this request, for why the
2 application should be granted, for what mitigation for
3 violation of the rules, as indicated here. You have to
4 demonstrate that Hometown Media, Inc. can expeditiously
5 resume the broadcast operation. You have the burden, the
6 Bureau doesn't have to put in the evidence, you have to put
7 in the evidence.

8 MR. SILVA: All right, I've submitted a motion for
9 summary decision.

10 JUDGE CHACKIN: I understand that.

11 MR. SILVA: And under the rule, at least my
12 understanding of 1.251, is you have to consider what I've
13 submitted and what they've submitted in determining whether
14 or not there are any genuine issues that remain.

15 Now, aside from the issue that you have raised,
16 Your Honor, and I am prepared to address that. But aside
17 from that issue, I mean, is there going to be any dispute
18 about these rule violations? We've conceded, Hometown has
19 conceded that it violated those two rules. And it has set
20 forth the extenuating circumstances. I cannot find any
21 cases on those rules.

22 Now, maybe the Bureau can find one. But there is
23 no case I could find where a license was -- a renewal was
24 denied for staying off the air for three months without
25 authority. And that is the nature of the rule. I mean,

1 that's conceded. That's what was spelled out in the
2 designation order. And once that renewal is granted, what
3 we propose is putting the station back on the air right
4 away, with Hometown, the licensee will do it, with the
5 assistance of the new owners.

6 And we can file the assignment application today.
7 But I don't see any --

8 JUDGE CHACHKIN: Well, all I can tell you is the
9 Bureau has indicated that they are going to oppose your
10 motion and they are also going to file a counter-motion. We
11 will just have to wait and see what the Bureau files.

12 MR. SILVA: Okay, well I can tell you this
13 morning, Your Honor, that you might as well -- if the Bureau
14 feels that this action serves the public interest, fording a
15 qualified licensee to try and get a station back on the air,
16 then they are perfectly willing to do this. But they have
17 to realize that these people cannot spend a fortune in a
18 full-blown hearing to determine whether or not the station
19 was off the air for three months and whether the license
20 should be denied for that basis. And I don't think that's
21 serving the public interest.

22 And, you know, really, that's why we were hoping,
23 Your Honor, would step in here and take some action.

24 JUDGE CHACHKIN: I have to await the Bureau's
25 opposition. I have to wait their counter-motion.

1 MR. SILVA: I'm not saying that you shouldn't.

2 JUDGE CHACHKIN: They have rights.

3 MR. SILVA: I know they have rights. And I think
4 that we were hoping that, Your Honor, would see that what we
5 are proposing here, while a little bit unusual, will
6 ultimately serve the public interest.

7 JUDGE CHACHKIN: I'm still guided by precedent and
8 I'll have to see what the Bureau has to say.

9 MR. SILVA: Okay.

10 JUDGE CHACHKIN: And what the precedent is on a
11 situation of this nature, and make the determination. My --
12 all I can say in my initial reaction is that a motion for
13 summary decision does not lie here. That there is no basis
14 for granting it. The facts are not clear, there still
15 remains a need for a hearing on these issues. But I will
16 await the Bureau's viewpoint and the Bureau is filing a
17 counter-motion, and I assume you will file an opposition.
18 And I'll rule on those things when they come.

19 I don't know what precedent the Bureau is going to
20 cite. I know you haven't cited any precedent supporting
21 this unusual situation, as you say it.

22 MR. SILVA: Well, that's because it's unusual,
23 Your Honor. I cited cases for the proposition that summary
24 decision --

25 JUDGE CHACHKIN: Well, you have only cited cases

1 that --

2 MR. SILVA: -- is granted where there aren't any
3 genuine issues of fact.

4 JUDGE CHACHKIN: But all that says is that that
5 motion for summary decision lies, but it doesn't say which
6 way. It doesn't say -- the fact that there may not be a
7 genuine question as to the facts doesn't mean that under the
8 law your motion should be granted and a grant should be made
9 of the application renewal. It could work the other way
10 too.

11 The fact that there are no factual questions may
12 mean to be disposed of under the law that your application
13 renewal should be denied. That's all you have established
14 here, that there aren't any facts you claim to be litigated.
15 But not that the law is clear in support of your position,
16 since you haven't cited any precedent supporting your
17 position for the ultimate resolution of this case.

18 MR. SILVA: Well, Your Honor, I just ask you to
19 read the letter from the City of Waynesboro.

20 JUDGE CHACHKIN: Well, I --

21 MR. SILVA: Because they seem to think that
22 placing that station back on the air will serve the public
23 interest.

24 JUDGE CHACHKIN: Well, what I intend to do is to
25 establish procedural dates today. If I grant either motion

1 for summary decision, obviously, there won't be any need,
2 but we have a considerable period of time before September
3 24th for me to act on any motions for summary decision and
4 any response.

5 Now, if you are indicating, Mr. Silva, that you
6 don't intend to proceed if your motion for summary decision
7 is not granted, than we have a different situation. But I
8 can't guarantee you at this time that I am going to grant
9 your motion for summary decision. I have to wait, what the
10 Bureau has to say, review precedent and see where we stand.

11 MR. SILVA: Well, Your Honor, in response to your
12 question, we are not in a position where we can go ahead and
13 participate in a full-blown hearing.

14 JUDGE CHACHKIN: What does the Bureau have to say.

15 MR. ARONOWITZ: Your Honor, it appears to really -
16 - it doesn't seem to be a lot of flexibility here. I mean,
17 if the motion for summary decision isn't granted, we have to
18 go to hearing.

19 JUDGE CHACHKIN: And if the licensee defaults, as
20 I guess that will be the situation, I am going to establish
21 dates. And that's the licensee's choice what they want to
22 do.

23 MR. SILVA: Well, I'm just -- I'm trying to save
24 the parties some time and effort here. I am trying to be as
25 clear as I possibly can. But that is, the parties involved

1 in this case cannot afford to go through a full-blown
2 hearing, and they would like to engage in that exercise, but
3 they cannot afford to. And so that if there isn't someway
4 to summarily resolve the issues, than the case is over.

5 I mean, we've -- we are trying to -- we'll try to
6 answer any questions that the Bureau raises and that Your
7 Honor raises, but, you know, it's just too costly, it's an
8 AM station in a small town. And the parties have already
9 spent enough money, I mean there is creditors out there and
10 they are not going to get paid either. But, you know, I
11 don't know that that is taken into account in determining
12 whether the public interest is served or not.

13 But we were trying to expedite the renewal and get
14 the station back on the air because we thought that was the
15 whole point of this exercise. But, as far as from our
16 standpoint, there is no purpose served by setting hearing
17 dates, because we cannot proceed through a hearing.

18 JUDGE CHACHKIN: So your position is than, I
19 understand it, if I deny your motion for summary decision,
20 you will submit the license for renewal? You will vacate
21 the license for renewal, is that what you are saying?

22 MR. SILVA: Well, I assume it will be denied, Your
23 Honor. Yes, I don't think we are going appeal it after --

24 JUDGE CHACHKIN: Well, the fact that I deny your
25 motion for summary decision doesn't --